

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ramakrishna S.  
Budampati

Examiner: Amancio Gonzalez

Serial No.: 10/800,482

Group Art Unit: 2617

Filed: March 15, 2004

Docket: H0005509 (256.193US1)

For: REDUNDANT WIRELESS NODE NETWORK WITH COORDINATED  
RECEIVER DIVERSITY

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**REPLY BRIEF UNDER 37 CFR § 41.41**

Mail Stop Appeal Brief- Patents  
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The Examiner's Answer on page 8 contends that, in relation to the Oestreich reference, "the appellant overlooks the fact that the functions of two base stations receiving signals from a single mobile station in [a] wireless network is unfailingly similar to two infrastructure nodes receiving signals from a single wireless sensor in a wireless network of sensors, which is disclosed by Warrior (see the title, fig. 4)." The Appellant respectfully disputes this contention.

Contrary to the Examiner's assertion, the Warrior reference does not disclose in Figure 4 two infrastructure nodes that receive signals from a single wireless sensor in a network of sensors. Indeed, the Examiner's Answer explicitly admits this at page 9, lines 17-19. The Appellant respectfully submits that such contradictory statements in the Examiner's Answer prevents the establishment of a *prima facie* case of obviousness. Moreover, the accuracy of this admission is confirmed by Figure 4 of Warrior that, while admittedly illustrates two infrastructure nodes 402<sub>N1</sub> and 402<sub>N2</sub>, these two infrastructure nodes do not receive signals from a single wireless sensor node. Rather, as illustrated in Figure 4, the infrastructure node 402<sub>N1</sub> receives signals from first sensor nodes 401<sub>N1</sub>, and the infrastructure node 402<sub>N2</sub> receives signals from second sensor nodes 401<sub>N2</sub>. Therefore, the Oestreich and Warrior references are not "unfailingly similar" as

contended by the Examiner's Answer, and the Appellant respectfully submits that this difference between the Oestreich and Warrior references illustrates that it would not have been obvious to one of skill in the art to combine these references at the time that the invention was made.

The Examiner's Answer on page 9 contends that "a person of ordinary skill in the art would clearly see that what is missing in Oestreich, i.e., a network or [*Sic* "of"] wireless sensors, is provided by Warrior." The Appellant respectfully disagrees with this contention. Oestreich, as illustrated in Fig. 1, relates to a mobile station (MS) in a radio communication system (such as a cellular telephone network) communicating with one or more base stations (BS1, BS2). The Appellant respectfully submits that a person of skill in the radio communication arts, would not recognize that the mobile communication network of Oestreich "is missing" wireless sensors. Moreover, the Examiner's Answer does not provide an alleged purpose of sensors in a radio communication system such as a cellular telephone network or explain why one of skill in the art would be motivated to add sensors to a radio communication system such as a cellular telephone network. Rather, that combination is disclosed only by the Appellant, and the Examiner's Answer is using the Appellant's disclosure to assist in combining Oestreich and Warrior, which the Appellant respectfully submits is improper.

The Appellant's principal brief contends that there is no teaching in Warrior that its wireless sensors 401<sub>N1</sub> or 401<sub>N2</sub> transmit to more than one of its access points (infrastructure nodes). The Examiner's Answer in the first full paragraph on page 10 responds that Oestreich, not Warrior, was cited for this limitation. The Appellant respectfully submits that the Examiner's Answer does not adequately rebut the Appellant's contention. The Appellant has shown that a sensor node in Warrior has no need to transmit to more than one access point because there are no hand-off concerns in Warrior. Consequently, one of skill in the art would not have been led to combine Oestreich's teaching of a mobile station communicating with two base stations with Warrior. The Appellant respectfully submits that it is improper to simply pick and choose elements from references, and combine them as recited in the Appellant's claims, without a convincing rationale as required by *KSR*.

The Appellant's principal brief contends that the teaching of Oestreich relating to a single node transmitting to two base stations is not applicable to Warrior, at least in part because there are no hand-off needs between the sensor nodes and access nodes in Warrior. The Examiner's Answer responds that the Appellant veers from the claim language because there are no hand-off limitations in the claims. The Appellant respectfully replies that its point regarding the complete lack of a hand-off procedure in Warrior was not made in response to an element of the claimed subject matter, but rather to show the impropriety of combining Oestreich and Warrior. As such, it simply points out the unlikelihood that one of skill in the art would have combined Oestreich and Warrior, and consequently the lack of a *prima facie* case of obviousness and the impropriety of the claim rejections.

The Appellant stands by its contention that a *prima facie* case of obviousness has not been established because, as pointed out in the first paragraph on page 14 of its principal brief, any combination of Oestreich and Warrior would make both Oestreich and Warrior inoperable. As pointed out in the Appellant's principal brief, the MPEP states that such a combination cannot support a *prima facie* case of obviousness. The Examiner's Answer tries to avoid this by narrowly defining operability as "whether two infrastructure nodes are capable of receiving and combining [a] signal receive[d] from a single node." However, the MPEP refers to whether a combination of references renders a reference inoperable, not to whether one or two elements of a claim could be made operable in a combination. Furthermore, the guidance in the MPEP that the combination cannot make a reference inoperable is consistent with a *Graham* obviousness analysis and the statutory language of section 103, wherein one is to determine if the subject matter *as a whole* would have been obvious to one of skill in the art. The Appellant in its principal brief illustrated that the combination of Oestreich and Warrior render each inoperable, and the Appellant respectfully reiterates that this shows the lack of a *prima facie* case of obviousness.

SUMMARY

For the reasons argued in the Appellant's Principal Brief and the Appellant's Reply Brief, the claims were not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Oestreich in view of Warrior. It is respectfully submitted that the art cited does not render the claims obvious and that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date

August 10, 2009

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10<sup>th</sup> day of August 2009.

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